

**DEED OF ASSIGNMENT OF PATENTS**

**between**

***MASTERCOOL INTERNATIONAL PTY LIMITED***  
***ACN 091 109 054***

**and**

***FOCUS THERMAL TECHNOLOGIES (INTERNATIONAL) PTY***  
***LIMITED***  
***ACN 098 576 704***

I certify that I have sighted the  
original and this is a true and  
correct copy of same

*Joseph Doherty*  
SOLICITOR & ATTORNEY

THIS DEED is made on

25<sup>th</sup> of March

2002

## PARTIES

1. **MASTERCOOL INTERNATIONAL PTY LIMITED (ACN 091 109 054)** of 21 Mellor St, West Ryde, Sydney, New South Wales, "Assignor".
2. **FOCUS THERMAL TECHNOLOGIES (INTERNATIONAL) PTY LIMITED (ACN 098 576 704)** of Unit 2, 12 Cunningham St, Moorebank, Sydney, New South Wales, "Assignee".

## RECITALS

- A. The Assignor has been granted the Patents in Australia and elsewhere.
- B. The Assignor has agreed to assign, transfer and set over to the Assignee all its rights, title and interest in the Patents including the right to apply for or obtain corresponding letters patent in any country of the Territory.
- C. The Assignor has not licensed the Patents.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 DEFINITIONS

In this deed unless the context otherwise requires or permits:

*Assignor* means *Mastercool International Pty Limited (ACN 091 109 054)*

*Assignee* means *Focus Thermal Technologies (International) Pty Limited (ACN 098 576 704)*;

*Patents* means the provisional patents particularised in the Schedule; and

*Territory* means the world.

#### 1.2 INTERPRETATION

In this deed unless the context otherwise requires or permits:

- (a) references to a party will include as the context requires respective executors, administrators, successors and permitted assigns;
  - (b) references to a person includes any other entity recognised by law and vice versa;
  - (c) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
  - (d) references to months and years means calendar months and years;
  - (e) words denoting the singular number include the plural and vice versa;
-

- (f) words denoting one gender include every gender;
- (g) words denoting natural persons include any Corporation or other body corporate or Government Body and vice versa;
- (h) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- (i) every covenant or provision applying to or binding more than one person will bind them jointly and each of them severally;
- (j) delivery of this deed will be taken to have been given on the date it bears;
- (k) if any part of this deed is void or unenforceable or would be so unless severed, then the rest of the document will continue to have full force and effect;
- (l) the use of headings are only for convenience and do not affect interpretation; and
- (m) if the day on which any act, matter or thing is to be done under or pursuant to this deed is not a business day, that act, matter or thing may be done on the next business day. A business day is a day on which banks are open for general banking business.

## **2. ASSIGNMENT OF PATENTS AND OTHER RIGHTS**

As consideration for the payment by the Assignee to the Assignor of the sum of \$10,000 (this amount to be owed by the company on terms to be agreed) the Assignor as beneficial owner assigns to the Assignee:

- (a) the Patents and all rights arising from them in the Territory together with;
- (b) all corresponding rights obtainable in the Territory in respect of the inventions the subject of the Patents and in the priority dates of the Patents;
- (c) all know-how and technical information relating to the Patents; and
- (d) all rights, powers, liberties and immunities arising or to arise from any applications and from any letters patent granted in relation to the Patents to hold unto the Assignee absolutely from the date of this deed.

## **3. ASSIGNOR UNDERTAKING**

The assignor undertakes at the expense of the Assignee to do all acts and execute all documents necessary or desirable for effecting the title of the Assignee to the Patents and in case of default the Assignor hereby appoints the Assignee as its attorney for such purpose.

## **4. COSTS AND FEES**

All fees, costs and expenses incurred by the Assignor in connection with enabling the Assignee to be registered as the sole owner of the Patents shall be borne and paid by the Assignee.

## **5. STAMP DUTY**

All stamp duty and other government charges payable in respect of this deed shall be paid by the Assignee.

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**6. FURTHER ASSURANCES**

The Assignor agrees to deliver up to the Assignee on request all certificates of title, papers, plans, reports and items in relation to all the rights agreed to be assigned pursuant to **clause 2**.

**7. REPRESENTATIONS AND WARRANTIES**

The Assignor represents, warrants and undertakes to the Assignee that:

- (a) the Assignor is not aware of any fact by which the Patents may be declared invalid, or any claim by which any Patent should be amended.
- (b) neither the execution of this deed nor the performance by the Assignor of its obligations will cause the Assignor to be in breach of any agreement to which it is a party or is subject;
- (c) the particulars of each Patent as set out in the Schedule are true and correct;
- (d) the Assignor has full and beneficial right and title to the Patents;
- (e) the Assignee shall have and enjoy quiet possession of the Patents uninterrupted by the Assignor or any person claiming under the Assignor;

**8. LAW AND JURISDICTION**

**8.1 GOVERNING LAW**

This deed is governed by the law in force in New South Wales.

**8.2 SUBMISSION TO JURISDICTION**

The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed.

**9. GENERAL**

**9.1 AMENDMENT**

This deed may only be amended or supplemented in writing signed by the parties.

**9.2 COUNTERPARTS**

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

**9.3 ENTIRE AGREEMENT**

This deed and any annexures is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed

**9.4 COSTS**

The Assignee will pay the costs, fees and expenses in connection with this deed, and will be liable for stamp duty on this deed.

**EXECUTED AS A DEED in New South Wales**

**SIGNED SEALED AND DELIVERED by**  
**MASTERCOOL INTERNATIONAL PTY LIMITED)**  
**(ACN 091 109 054)**

in the presence of:

J.P. Bingley  
Signature of witness

JAN PATRICIA BINGLEY  
Name of witness – please print

90 AWABA ST MOSMAN  
Address of witness

[Signature]  
Signature of director

Barry James Smart  
Name of director – please print

**SIGNED SEALED AND DELIVERED by**  
**FOCUS THERMAL TECHNOLOGIES**  
**(INTERNATIONAL) PTY LIMITED**  
**(ACN 098 576 704)**

in accordance with its constitution in the presence of:

J.P. Bingley  
Signature of secretary

JAN PATRICIA BINGLEY  
Name of secretary – please print

[Signature]  
Signature of director

STUART JAMES BEIL  
Name of director – please print

**SCHEDULE: LIST OF PATENTS**

<b>1.</b>	<b>Australian Patent Number:</b>	<b>PQ4506</b>
	Description:	Carbonated Beverage System
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	9/12/1999
	Patent Status:	Provisional Patent (Lapsed 9/12/2000)
<b>2.</b>	<b>Australian Patent Number:</b>	<b>PR4368</b>
	Description:	Thermal Storage Device
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	1/12/1999
	Patent Status:	Provisional Patent (Lapsed 1/12/2000)
<b>3.</b>	<b>Australian Patent Number:</b>	<b>PR4009</b>
	Description:	Thermal Storage Device
	Applicant:	Mastercool International
	Inventor:	Barry James Small
	Date Filed:	28/3/2001
	Patent Status:	Provisional Patent (Current)

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25<sup>th</sup> of March

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I have sighted the original and certify that  
this is a true and correct copy of the same,

*Jennifer Doherty*  
SOLICITOR/ATTORNEY

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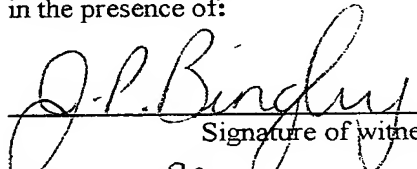
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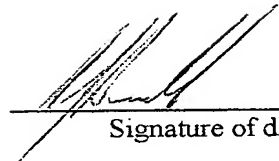
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**EXECUTED AS A DEED in New South Wales**

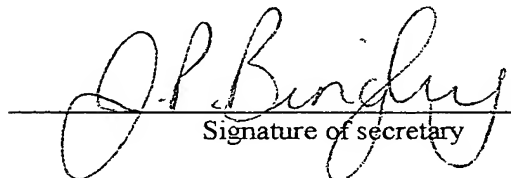
**SIGNED SEALED AND DELIVERED** by )  
**MASTERCOOL INTERNATIONAL PTY LIMITED**)  
**(ACN 091 109 054)** )  
in the presence of: )

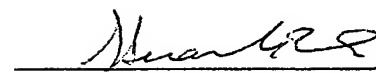
  
\_\_\_\_\_  
Signature of witness )  
**JAN PATRICIA BINGLEY** )  
\_\_\_\_\_  
Name of witness – please print )  
**90 AWABA ST MOSMAN** )  
\_\_\_\_\_  
Address of witness )

  
\_\_\_\_\_  
Signature of director

**Barry James Smart** )  
\_\_\_\_\_  
Name of director – please print

**SIGNED SEALED AND DELIVERED** by )  
**FOCUS THERMAL TECHNOLOGIES** )  
**(INTERNATIONAL) PTY LIMITED** )  
**(ACN 098 576 704)** )  
in accordance with its constitution in the presence of: )

  
\_\_\_\_\_  
Signature of secretary )  
**JAN PATRICIA BINGLEY** )  
\_\_\_\_\_  
Name of secretary – please print )

  
\_\_\_\_\_  
Signature of director

**STUART JAMES BEIL** )  
\_\_\_\_\_  
Name of director – please print



Australian Government

IP Australia

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02 May 2005

ACN 106 396 696 Pty Ltd  
5/10 Lyn Parade  
Prestons NSW 2170  
Australia

RE: Application number **2002244521**  
in the name(s) of **A.C.N. 106 396 696 Pty Limited**

Your Ref:

Dear Sir/Madam

Thank you for your request, received on 25 October 2004, to record an assignment on the above patent application.

I am pleased to advise that the assignment has been recorded and the application is now proceeding in the name(s) of:

**A.C.N. 106 396 696 Pty Limited**

If you need any further information please contact 0262832483. Alternatively, you may contact us by email at [assist@ipaustralia.gov.au](mailto:assist@ipaustralia.gov.au).

Yours faithfully

KERRIE WRIGHT  
IP Rights Administration  
Electronic Records Administration  
Phone: (02) 6283 2483

DEED FOR SALE OF ASSETS

FOCUS THERMAL TECHNOLOGIES LIMITED  
A.C.N. 098 576 704  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)

AND  
A.C.N 106 396 696 PTY LIMITED  
A.C.N. 106 396 696

I have sighted the original and  
certify that this is a true and  
correct copy of same,

*Jennifer Doherty*  
SOLICITOR/ATTORNEY



GILLIS DELANEY BROWN

Lawyers

Level 6 179 Elizabeth Street Sydney NSW 2000 Australia  
Ph (02) 9394 1000 Fax (02) 9394 1100 [www.gdb.com.au](http://www.gdb.com.au)  
Ref: SWG/GDS/010672

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SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

ANNEXURE "A"

THIS SALE DEED MADE <sup>x</sup> 28<sup>TH</sup> DAY OF <sup>x</sup> Sept 2004

BETWEEN: FOCUS THERMAL TECHNOLOGIES LIMITED  
A.C.N. 098 576 704 (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) of 5/10 Lyn Parade, Prestons in the State of  
New South Wales ("Company")

AND: A.C.N. 106 396 696 PTY LIMITED A.C.N. 106 396 696 of 5/10  
Lyn Parade, Prestons in the State of New South Wales ("Secured  
Creditor")

**RECITALS:**

- A. On 30 September 2003 the Company granted the Charge in favour of the Secured Creditor to secure repayment of the Advances.
- B. On 1 July 2004 the Deed Administrator was appointed voluntary administrator of the Company.
- C. On 28 July 2004 a meeting of creditors of the Company convened by the Deed Administrator pursuant to Section 439A(1) of the Corporation Act resolved that the Company execute the Deed of Company Arrangement.
- D. On 16 August 2004 the Deed Administrator, the Company and Paton executed the Deed of Company Arrangement.
- E. Under clause 5.3 of the Deed of Company Arrangement the Deed Administrator acknowledges that all assets, book debts and entitlements of the Company may be sold to the Secured Creditor to enable the Company to pay the sum referred to in clause 5.1 of the Deed of Company Arrangement into the Administration Fund.
- F. The Company has agreed to sell the Assets to the Secured Creditor and the Secured Creditor has agreed to purchase the Assets for the Purchase Price solely to enable the Company to pay the Administration Fund as contemplated in clause 5.3 of the Deed of Company Arrangement, on the terms and conditions set out in this Deed.
- G. The Company acknowledges that the Secured Creditor has paid the Sum Paid to the Company in part payment of the Purchase Price.

## OPERATIVE PART:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

- (a) In this deed unless the context otherwise requires:

**"Administration Fund"** means the Administration Fund under the deed of Company Arrangement;

**"Assets"** means all assets of the Company as at Completion including without limitation the following assets:

- (a) the Plant and Equipment;
- (b) the Intellectual Property;
- (c) the Sundry Debts; and
- (d) the Stock

but excluding the Excluded Assets;

**"ASIC"** means the Australian Securities & Investment Commission;

**"Balance of the Purchase Price"** means the Purchase Price (\$25,000.00) less the Sum Paid (\$15,000.00), being the sum of ten thousand dollars (\$10,000.00);

**"Charge"** means the Charge over the Company in favour of the Secured Creditor with ASIC registered number 991798.

**"Completion"** means the completion of the sale and purchase of the Assets on the Completion Date;

**"Completion Date"** means the date of this Deed or such other date as the parties may otherwise agree upon;

**"Deed Administrator"** means Grahame Hill;

**"Deed of Company Arrangement"** means the deed of company arrangement entered into by the Company, the Deed Administrator and Paton on 16 August 2004;

**"Encumbrances"** means any mortgage, charge (whether fixed or floating) pledge, lien (including, without limitation any unpaid Company's lien or similar),

option, hypothecation, title retention or conditional sale agreement, lease, hire or hire purchase agreement and any other encumbrance or security interest;

**"Excluded Assets"** means:

- (a) cash, including but not limited to, funds held with any bank or financial institution to the credit of the Company and cash on hand as at the Completion Date;
- (b) Excluded Records; and
- (c) any goodwill of the Company;

**"Excluded Records"** means all books and records of the Company, except documents the Company is expressly required to hand over to the Secured Creditor pursuant to this Deed;

**"GST"** means the tax imposed or sought to be imposed by the GST Acts;

**"GST Acts"** means A New Tax System (Goods and Services Tax) Act 1999 and the related imposition Acts of the Commonwealth;

**"Intellectual Property"** means intellectual property of the Company set out in Schedule 2 and all common law and statutory rights and remedies in relation thereto available to the Company at Completion;

**"Plant and Equipment"** means plant and equipment of the Company set out in Annexure "A" except for items 65, 69 and 76;

**"Purchase Price"** means the sum of twenty five thousand dollars (\$25,000.00);

**"Stock"** means all items of stock and consumables of the Company including items 65, 69 and 76 in Annexure "A";

**"Sum Paid"** means the sum of fifteen thousand dollars (\$15,000.00);

**"Sundry Debts"** means sundry debts of the Company detailed in Schedule 3;

**"Warranties"** means the representations and warranties by the Company set out in Schedule 1;

## 1.2 Interpretation

- (a) In this Deed unless the context otherwise indicates:



- (1) references to any party to this deed shall include the executors administrators successors and permitted assigns of that party;
  - (2) references to a clause or schedule or other annexure shall be construed as references to a clause of or schedule or annexure to this deed and references to this deed shall include its schedules and any annexures;
  - (3) references to (or to any specified provision of) this deed or another deed, or document shall be construed as references to (that provision of) this deed or that other deed or document as amended or substituted with the deed of the relevant parties and in force at any relevant time;
  - (4) references to any statute, ordinance or other law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
  - (5) words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
  - (6) where any word or phrase is given a defined meaning in this deed, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
  - (7) headings included in this deed are for convenience only and shall be disregarded in the construction of this deed.
- (b) Defined terms in the Deed of Company Arrangement shall have the same meaning in this Deed, unless the context otherwise requires.

## 2. SALE AND PURCHASE

- (1) The Company agrees to sell and the Secured Creditor agrees to purchase the Assets for the Purchase Price.
- (2) The title to, property in and risk of the Assets:
  - (a) until Completion, remains solely with the Company; and
  - (b) passes to the Secured Creditor on and from Completion.

## 3. PURCHASE PRICE

- (1) The consideration for the purchase of the Assets is the payment of the Purchase Price by the Secured Creditor.
- (2) The Company acknowledges that the Secured Creditor has paid the Sum Paid to the Company in part payment of the Purchase Price.
- (3) The Balance of the Purchase Price shall be paid by way of cheque(s) to the Company or as the Company may direct in writing.
- (4) The Company hereby irrevocably directs the Secured Creditor to pay the Balance of the Purchase Price direct to the Administration Fund.

## 4. COMPLETION AND PAYMENT

- (1) Completion of this sale shall occur not later than 3 p.m. on the Completion Date.
- (2) Completion shall be effected at the Company solicitor's office or at such other place as is nominated by the Company'.
- (3) On Completion the Company will vest in the Secured Creditor title to and possession and control of the Assets, free from all Encumbrances other than the Charge.
- (4) On Completion the Company must deliver to the Secured Creditor, in addition to any other things, documents or records expressly agreed in this Deed:
  - (a) the documents and certificates establishing or providing evidence of title and ownership to the Assets;

- (b) an effective assignment or transfer of each item of Asset as the Secured Creditor requires to vest full possession and benefit of the Assets in the Secured Creditor;
  - (c) any waiver, consent or other document and do all such acts which the Secured Creditor may require to obtain a good title to the Sundry Debts, including all forms and documents necessary under any statute or regulation in relation to the Sundry Debts, and any power of attorney under which any document required to be delivered under this sub-clause has been signed or executed, and to enable the Secured Creditor to become legal owner of the Sundry Debts;
  - (d) all information, documents and records necessary to enable to Secured Creditor to recover the Sundry Debts for the benefit of the Secured Creditor; and
  - (e) a Tax Invoice for the sale of the Assets;.
- (5) On Completion the Secured Creditor must pay the Balance of the Purchase Price in accordance with clause 3.

## 5. SUNDRY DEBTS

- (1) The Company will upon request by the Secured Creditor at any time and from time to time after the execution of this Deed and payment of the Purchase Price, execute, sign and deliver all documents and do all things necessary or appropriate for transferring to and vesting the Sundry Debts in the Secured Creditor, or otherwise for giving effect to the terms of this Deed at the cost of the Company. This clause shall not merge on Completion and shall enure for the benefit of the Secured Creditor.

## 6. INTELLECTUAL PROPERTY

- (1) The Company must at the request and expense of the Secured Creditor do all things, sign all documents and perform all such acts as the Secured Creditor may from time to time reasonably require for the purpose of confirming or enforcing the Secured Creditor's title to the Intellectual Property in any part of the world, including waiving or assigning to the

Secured Creditor any and all moral rights that the Company's employees, agents or contractors may have in the Intellectual Property.

**7. COMPANY'S WARRANTIES**

- (1) The Company represents and warrants to the Secured Creditor that each of the Warranties is true and correct at the date of this Deed and will continue to be true and correct on Completion.
- (2) The Company acknowledges and agrees that each of the Warranties are separate from the others and the interpretation of any one of the Warranties is not affected by any other warranty.
- (3) The Warranties do not merge on Completion.

**8. SECURED CREDITOR'S WARRANTIES**

- (1) The Secured Creditor represents and warrants to the Company as at the date of this Deed and continuing to Completion that:
  - (a) the execution, delivery and performance of this Deed by the Secured Creditor will constitute legally valid and binding obligations of the Secured Creditor, enforceable in accordance with its terms;
  - (b) no meeting has been convened or resolution proposed or petition presented and no order has been made for the winding up of the Secured Creditor. No receiver, administrator, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to the Secured Creditor or the assets of the Secured Creditor or any of them; and
  - (c) the Secured Creditor is duly incorporated and has full corporate power to own, lease, operate and purchase the Assets.

**9. GOODS AND SERVICES TAX**

- (1) Any consideration to be paid or provided for a supply made under or in connection with this Deed has been agreed without regard to any GST i.e. they are GST exclusive.

- (2) Despite any other provision in this Deed, if a party ('Supplier') makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is stated to be GST inclusive):
  - (a) the consideration otherwise payable or to be provided for that supply is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
  - (b) the Recipient must pay that amount, without set off or deduction, at the same time as it must pay or provide the consideration for that supply.
- (3) The Recipient need not make a payment due under this **clause 9** in respect of a taxable supply until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

#### 10. GENERAL

- (1) This deed is governed by the law in force in New South Wales.
- (2) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.
- (3) Without preventing any other mode of service, any document in an action including, without limitation, any writ of summons or other originating process or any third or other party notice may be served on a party by being delivered to or left for that party at its address for service of notices under clause (4).
- (4) A notice, approval, consent or other communication in connection with this deed:
  - (a) must be in writing unless expressly specified otherwise; and

- (b) must be left at or sent by prepaid ordinary post to the address of the addressee which is specified on page 1 of this deed in the case of the parties to this deed.
- (5) Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- (6) A letter is taken to be received on the third day after posting.
- (7) Any present or future legislation which operates to vary an obligation or right, power or remedy of a person in connection with this deed is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
- (8) A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise. In considering requests for its approval or consent a party must act with reasonable expedition.
- (9) A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, body or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
- (10) A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.
- (11) This deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.
- (12) If any provision contained in this Deed is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Deed which otherwise continues to be valid and operative.

- (13) Two or more parties to this Deed who represent the same interest, as the Company or the Secured Creditor assume the liability to comply with their obligations under this Deed jointly, and in addition each of them assumes those obligations severally.
- (14) The Company or the Secured Creditor may not assign the benefit of the rights under this Deed before Completion.
- (15) If under the provisions of this Deed or under any notice or demand anything is required to be done on a day which is not a business day, the day or the last day for compliance is deemed to be the immediately following business day.
- (16) The Secured Creditor shall pay all stamp duty payable upon this Deed.

## **SCHEDULE 1**

### **WARRANTIES BY THE COMPANY**

1. **Company authorised**

The Company has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

2. **Power to Sell**

The Company has full power and authority to perform its obligations under this Deed and can do so without the consent of any other persons.

3. **No legal impediment**

The execution delivery and performance by the Company of this Deed comply with:

- (a) each law, regulation, authorisation, ruling, judgment, order or decree of any governmental agency;
- (b) the memorandum and articles of association or other constituent documents of the Company; and
- (c) any Encumbrances or document which is binding on the Company.

4. **Binding Deed**

The execution, delivery and performance of this Deed by the Company will constitute legally valid and binding obligations of the Company, enforceable in accordance with its terms.

5. **The Assets**

The Company will on Completion be the absolute legal and beneficial owner of, and has good, marketable and insurable title to, all the Assets free from all Encumbrances whatsoever (whether arising by way of contract, statute, or otherwise) except the Charge.



## SCHEDULE 2

### INTELLECTUAL PROPERTY

1. PCT/AU02/00413 - TSU Patent Application.
2. PCT2003903499 - Carbonated Beverage System.
3. Trade Mark - Focus Logo No. 918901.
4. Trade Mark - PFN 57036 Ice Tower.

## **SCHEDULE 3**

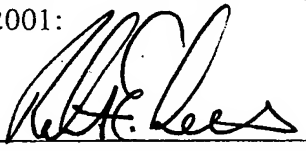
### **SUNDRY DEBTS**

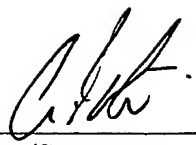
1. Barry Small - \$700.00.
2. Paul Wright - \$300.00.
3. Australian Taxation Office - \$2,499.00.

Executed as a Deed

**EXECUTION BY THE COMPANY:**

EXECUTED by FOCUS )  
TECHNOLOGIES LIMITED )  
A.C.N. 908 576 704 (SUBJECT TO )  
DEED OF COMPANY )  
ARRANGEMENT) in accordance  
with Section 127 of the Corporations  
Act 2001:

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: ROBERT LEES.

X   
\_\_\_\_\_  
Director/Secretary  
Full Name:

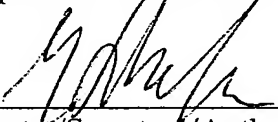
SIGNED FOR AND ON BEHALF )  
OF: )  
)  
)  
)

X \_\_\_\_\_

X \_\_\_\_\_  
Witness:  
Full Name:

**EXECUTION BY THE SECURED CREDITOR:**

EXECUTED by A.C.N. 106 396 696 )  
PTY LIMITED A.C.N. 106 396 696 )  
in accordance with Section 127 of the )  
Corporations Act 2001: )

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: GLENN THOMPSON

X \_\_\_\_\_  
Director/Secretary  
Full Name:



Australian Government

IP Australia

Discovery House, Phillip ACT 2606

PO Box 200, Woden ACT 2606

Australia

Phone +61 -2 6283 2999

Facsimile +61 -2 6283 7999

[www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

02 May 2005

ACN 106 396 696 Pty Ltd  
5/10 Lyn Parade  
Prestons NSW 2170  
Australia

RE: Application number **2002244521**  
in the name(s) of **A.C.N. 106 396 696 Pty Limited**

Your Ref:

Dear Sir/Madam

Thank you for your request, received on 25 October 2004, to record an assignment on the above patent application.

I am pleased to advise that the assignment has been recorded and the application is now proceeding in the name(s) of:

**A.C.N. 106 396 696 Pty Limited**

If you need any further information please contact 0262832483. Alternatively, you may contact us by email at [assist@ipaustralia.gov.au](mailto:assist@ipaustralia.gov.au).

Yours faithfully

KERRIE WRIGHT  
IP Rights Administration  
Electronic Records Administration  
Phone: (02) 6283 2483

**DEED FOR SALE OF ASSETS**

**FOCUS THERMAL TECHNOLOGIES LIMITED**  
**A.C.N. 098 576 704**  
**(SUBJECT TO DEED OF COMPANY ARRANGEMENT)**

**AND**

**A.C.N 106 396 696 PTY LIMITED**  
**A.C.N. 106 396 696**

*I certify that I have sighted  
the original and this is a true  
and correct copy of the same*  
*Jennifer Delaney*  
SOLICITOR/ATTORNEY



**GILLIS DELANEY BROWN**

**Lawyers**

Level 6 179 Elizabeth Street Sydney NSW 2000 Australia  
Ph (02) 9394 1000 Fax (02) 9394 1100 [www.gdb.com.au](http://www.gdb.com.au)  
Ref: SWG/GDS/010672

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SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

ANNEXURE "A"

THIS SALE DEED MADE <sup>x</sup> 28<sup>TH</sup> DAY OF <sup>x</sup> Sept 2004

BETWEEN: FOCUS THERMAL TECHNOLOGIES LIMITED  
A.C.N. 098 576 704 (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) of 5/10 Lyn Parade, Prestons in the State of  
New South Wales ("Company")

AND: A.C.N. 106 396 696 PTY LIMITED A.C.N. 106 396 696 of 5/10  
Lyn Parade, Prestons in the State of New South Wales ("Secured  
Creditor")

RECITALS:

- A. On 30 September 2003 the Company granted the Charge in favour of the Secured Creditor to secure repayment of the Advances.
- B. On 1 July 2004 the Deed Administrator was appointed voluntary administrator of the Company.
- C. On 28 July 2004 a meeting of creditors of the Company convened by the Deed Administrator pursuant to Section 439A(1) of the Corporation Act resolved that the Company execute the Deed of Company Arrangement.
- D. On 16 August 2004 the Deed Administrator, the Company and Paton executed the Deed of Company Arrangement.
- E. Under clause 5.3 of the Deed of Company Arrangement the Deed Administrator acknowledges that all assets, book debts and entitlements of the Company may be sold to the Secured Creditor to enable the Company to pay the sum referred to in clause 5.1 of the Deed of Company Arrangement into the Administration Fund.
- F. The Company has agreed to sell the Assets to the Secured Creditor and the Secured Creditor has agreed to purchase the Assets for the Purchase Price solely to enable the Company to pay the Administration Fund as contemplated in clause 5.3 of the Deed of Company Arrangement, on the terms and conditions set out in this Deed.
- G. The Company acknowledges that the Secured Creditor has paid the Sum Paid to the Company in part payment of the Purchase Price.

**OPERATIVE PART:****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

- (a) In this deed unless the context otherwise requires:

**"Administration Fund"** means the Administration Fund under the deed of Company Arrangement;

**"Assets"** means all assets of the Company as at Completion including without limitation the following assets:

- (a) the Plant and Equipment;
- (b) the Intellectual Property;
- (c) the Sundry Debts; and
- (d) the Stock

but excluding the Excluded Assets;

**"ASIC"** means the Australian Securities & Investment Commission;

**"Balance of the Purchase Price"** means the Purchase Price (\$25,000.00) less the Sum Paid (\$15,000.00), being the sum of ten thousand dollars (\$10,000.00);

**"Charge"** means the Charge over the Company in favour of the Secured Creditor with ASIC registered number 991798.

**"Completion"** means the completion of the sale and purchase of the Assets on the Completion Date;

**"Completion Date"** means the date of this Deed or such other date as the parties may otherwise agree upon;

**"Deed Administrator"** means Grahame Hill;

**"Deed of Company Arrangement"** means the deed of company arrangement entered into by the Company, the Deed Administrator and Paton on 16 August 2004;

**"Encumbrances"** means any mortgage, charge (whether fixed or floating) pledge, lien (including, without limitation any unpaid Company's lien or similar),



option, hypothecation, title retention or conditional sale agreement, lease, hire or hire purchase agreement and any other encumbrance or security interest;

**"Excluded Assets"** means:

- (a) cash, including but not limited to, funds held with any bank or financial institution to the credit of the Company and cash on hand as at the Completion Date;
- (b) Excluded Records; and
- (c) any goodwill of the Company;

**"Excluded Records"** means all books and records of the Company, except documents the Company is expressly required to hand over to the Secured Creditor pursuant to this Deed;

**"GST"** means the tax imposed or sought to be imposed by the GST Acts;

**"GST Acts"** means A New Tax System (Goods and Services Tax) Act 1999 and the related imposition Acts of the Commonwealth;

**"Intellectual Property"** means intellectual property of the Company set out in Schedule 2 and all common law and statutory rights and remedies in relation thereto available to the Company at Completion;

**Plant and Equipment**" means plant and equipment of the Company set out in Annexure "A" except for items 65, 69 and 76;

**"Purchase Price"** means the sum of twenty five thousand dollars (\$25,000.00);

**"Stock"** means all items of stock and consumables of the Company including items 65, 69 and 76 in Annexure "A";

**"Sum Paid"** means the sum of fifteen thousand dollars (\$15,000.00);

**"Sundry Debts"** means sundry debts of the Company detailed in Schedule 3;

**"Warranties"** means the representations and warranties by the Company set out in Schedule 1;

## 1.2 Interpretation

- (a) In this Deed unless the context otherwise indicates:

- (1) references to any party to this deed shall include the executors administrators successors and permitted assigns of that party;
  - (2) references to a clause or schedule or other annexure shall be construed as references to a clause of or schedule or annexure to this deed and references to this deed shall include its schedules and any annexures;
  - (3) references to (or to any specified provision of) this deed or another deed or document shall be construed as references to (that provision of) this deed or that other deed or document as amended or substituted with the deed of the relevant parties and in force at any relevant time;
  - (4) references to any statute, ordinance or other law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
  - (5) words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
  - (6) where any word or phrase is given a defined meaning in this deed, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
  - (7) headings included in this deed are for convenience only and shall be disregarded in the construction of this deed.
- (b) Defined terms in the Deed of Company Arrangement shall have the same meaning in this Deed, unless the context otherwise requires.

**2. SALE AND PURCHASE**

- (1) The Company agrees to sell and the Secured Creditor agrees to purchase the Assets for the Purchase Price.
- (2) The title to, property in and risk of the Assets:
  - (a) until Completion, remains solely with the Company; and
  - (b) passes to the Secured Creditor on and from Completion.

**3. PURCHASE PRICE**

- (1) The consideration for the purchase of the Assets is the payment of the Purchase Price by the Secured Creditor.
- (2) The Company acknowledges that the Secured Creditor has paid the Sum Paid to the Company in part payment of the Purchase Price.
- (3) The Balance of the Purchase Price shall be paid by way of cheque(s) to the Company or as the Company may direct in writing.
- (4) The Company hereby irrevocably directs the Secured Creditor to pay the Balance of the Purchase Price direct to the Administration Fund.

**4. COMPLETION AND PAYMENT**

- (1) Completion of this sale shall occur not later than 3 p.m. on the Completion Date.
- (2) Completion shall be effected at the Company solicitor's office or at such other place as is nominated by the Company'.
- (3) On Completion the Company will vest in the Secured Creditor title to and possession and control of the Assets, free from all Encumbrances other than the Charge.
- (4) On Completion the Company must deliver to the Secured Creditor, in addition to any other things, documents or records expressly agreed in this Deed:
  - (a) the documents and certificates establishing or providing evidence of title and ownership to the Assets;

- (b) an effective assignment or transfer of each item of Asset as the Secured Creditor requires to vest full possession and benefit of the Assets in the Secured Creditor;
  - (c) any waiver, consent or other document and do all such acts which the Secured Creditor may require to obtain a good title to the Sundry Debts, including all forms and documents necessary under any statute or regulation in relation to the Sundry Debts, and any power of attorney under which any document required to be delivered under this sub-clause has been signed or executed, and to enable the Secured Creditor to become legal owner of the Sundry Debts;
  - (d) all information, documents and records necessary to enable to Secured Creditor to recover the Sundry Debts for the benefit of the Secured Creditor; and
  - (e) a Tax Invoice for the sale of the Assets;.
- (5) On Completion the Secured Creditor must pay the Balance of the Purchase Price in accordance with clause 3.

## 5. SUNDRY DEBTS

- (1) The Company will upon request by the Secured Creditor at any time and from time to time after the execution of this Deed and payment of the Purchase Price, execute, sign and deliver all documents and do all things necessary or appropriate for transferring to and vesting the Sundry Debts in the Secured Creditor, or otherwise for giving effect to the terms of this Deed at the cost of the Company. This clause shall not merge on Completion and shall enure for the benefit of the Secured Creditor.

## 6. INTELLECTUAL PROPERTY

- (1) The Company must at the request and expense of the Secured Creditor do all things, sign all documents and perform all such acts as the Secured Creditor may from time to time reasonably require for the purpose of confirming or enforcing the Secured Creditor's title to the Intellectual Property in any part of the world, including waiving or assigning to the

Secured Creditor any and all moral rights that the Company's employees, agents or contractors may have in the Intellectual Property.

**7. COMPANY'S WARRANTIES**

- (1) The Company represents and warrants to the Secured Creditor that each of the Warranties is true and correct at the date of this Deed and will continue to be true and correct on Completion.
- (2) The Company acknowledges and agrees that each of the Warranties are separate from the others and the interpretation of any one of the Warranties is not affected by any other warranty.
- (3) The Warranties do not merge on Completion.

**8. SECURED CREDITOR'S WARRANTIES**

- (1) The Secured Creditor represents and warrants to the Company as at the date of this Deed and continuing to Completion that:
  - (a) the execution, delivery and performance of this Deed by the Secured Creditor will constitute legally valid and binding obligations of the Secured Creditor, enforceable in accordance with its terms;
  - (b) no meeting has been convened or resolution proposed or petition presented and no order has been made for the winding up of the Secured Creditor. No receiver, administrator, receiver and manager, provisional liquidator, liquidator or other officer of the Court has been appointed in relation to the Secured Creditor or the assets of the Secured Creditor or any of them; and
  - (c) the Secured Creditor is duly incorporated and has full corporate power to own, lease, operate and purchase the Assets.

**9. GOODS AND SERVICES TAX**

- (1) Any consideration to be paid or provided for a supply made under or in connection with this Deed has been agreed without regard to any GST i.e. they are GST exclusive.

- (2) Despite any other provision in this Deed, if a party ('Supplier') makes a supply under or in connection with this Deed on which GST is imposed (not being a supply the consideration for which is stated to be GST inclusive):
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#### 10. GENERAL

- (1) This deed is governed by the law in force in New South Wales.
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- (3) Without preventing any other mode of service, any document in an action including, without limitation, any writ of summons or other originating process or any third or other party notice may be served on a party by being delivered to or left for that party at its address for service of notices under clause (4).
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**SCHEDULE 1**  
**WARRANTIES BY THE COMPANY**

1.       **Company authorised**

The Company has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

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The Company has full power and authority to perform its obligations under this Deed and can do so without the consent of any other persons.

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The execution delivery and performance by the Company of this Deed comply with:

- (a)       each law, regulation, authorisation, ruling, judgment, order or decree of any governmental agency;
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- (c)       any Encumbrances or document which is binding on the Company.

4.       **Binding Deed**

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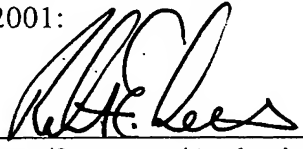
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1. Barry Small - \$700.00.
2. Paul Wright - \$300.00.
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Executed as a Deed

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EXECUTED by FOCUS )  
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A.C.N. 908 576 704 (SUBJECT TO )  
DEED OF COMPANY )  
ARRANGEMENT) in accordance  
with Section 127 of the Corporations  
Act 2001:

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: ROBERT LEES.

X   
\_\_\_\_\_  
Director/Secretary  
Full Name:


SIGNED FOR AND ON BEHALF )  
OF: )  
)  
)  
)

X \_\_\_\_\_

X \_\_\_\_\_  
Witness:  
Full Name:

**EXECUTION BY THE SECURED CREDITOR:**

EXECUTED by A.C.N. 106 396 696 )  
PTY LIMITED A.C.N. 106 396 696 )  
in accordance with Section 127 of the )  
Corporations Act 2001: )

X   
\_\_\_\_\_  
Director/Secretary/Authorised Person  
Full Name: GLENN THOMPSON

X \_\_\_\_\_  
Director/Secretary  
Full Name: